

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

JIMMY LAMONT ROBERTS

PETITIONER

v.

No. 1:18CV130-SA-DAS

WILKINSON COUNTY CORRECTIONAL FACILITY RESPONDENT

ORDER DENYING PETITIONER'S MOTION
TO ALTER OR AMEND JUDGMENT

This matter comes before the court on the plaintiff's motion for reconsideration of the court's order dismissing the instant petition under Fed. R. Civ. P. 41(b) for failure to comply with an order of the court because he failed to either pay the filing fee or submit a completed motion to proceed *in forma pauperis*. The court interprets the motion, using the liberal standard for *pro se* litigants set forth in *Haines v. Kerner*, 404 U.S. 519 (1972), as a motion to amend judgment under Fed. R. Civ. P. 59(e), which must be filed within 28 days of entry of judgment. An order granting relief under Rule 59(e) is appropriate when: (1) there has been an intervening change in the controlling law, (2) where the movant presents newly discovered evidence that was previously unavailable, or (3) to correct a manifest error of law or fact. *Schiller v. Physicians Res. Grp. Inc.*, 342 F.3d 563, 567 (5th Cir. 2003).

Rather than pay the filing fee or submit a motion to proceed as a pauper, Mr. Roberts filed a second petition for a writ of *habeas corpus*, *Roberts v. Wilkinson County Correctional Facility*, 1:18CV188-SA-JMV. In that petition, Mr. Roberts challenged the same conviction and raised the same grounds for relief as in the instant petition. The court dismissed the second petition as untimely filed on March 14, 2019. Mr. Roberts has yet to either pay the filing fee or file a motion to proceed as a pauper in the instant case.

The petitioner has not complied with the court's order, and the grounds for relief he seeks in the present case have been decided in another case. Thus, the petitioner has neither asserted nor proven any of the justifications to amend a judgment under Fed. R. Civ. P. 59(e). As such, his request to alter or amend judgment is DENIED.

SO ORDERED, this, the 30th day of August, 2019.

/s/ Sharion Aycock
U. S. DISTRICT JUDGE